

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jennine Giordano	Team: Team # 3	CCRB Case #: 200606866	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 05/25/2006 5:50 PM	Location of Incident: The corner of 144th Street and 7th Avenue	Precinct: 32	18 Mo. SOL 11/25/2007	EO SOL 11/25/2007	
Date/Time CV Reported Fri, 05/26/2006 9:33 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 05/26/2006 9:33 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Aaron Thorn	17386	907442	032 PCT
2. POM Eric Lugo	02061	932930	032 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Randy Morris	31240	898126	032 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Aaron Thorn	Off. Language: PO Aaron Thorn made remarks to § 87(2)(b) based upon race.	
B.POM Aaron Thorn	Abuse: PO Aaron Thorn stopped § 87(2)(b)	
C.POM Eric Lugo	Abuse: PO Eric Lugo frisked § 87(2)(b)	
D.POM Eric Lugo	Abuse: PO Eric Lugo searched § 87(2)(b)	
E.POM Eric Lugo	Abuse: PO Eric Lugo frisked § 87(2)(b)	
F.POM Eric Lugo	Abuse: PO Eric Lugo searched § 87(2)(b)	
G.POM Eric Lugo	Discourtesy: PO Eric Lugo spoke obscenely to § 87(2)(b) and § 87(2)(b)	
H.POM Aaron Thorn	Discourtesy: PO Aaron Thorn spoke obscenely to § 87(2)(b) and § 87(2)(b)	
I.POM Aaron Thorn	Abuse: PO Aaron Thorn frisked § 87(2)(b)	
J.POM Aaron Thorn	Abuse: PO Aaron Thorn searched § 87(2)(b)	
K.POM Eric Lugo	Abuse: PO Eric Lugo searched the car in which § 87(2)(b), § 87(2)(b) and § 87(2)(b) were occupants.	
L.POM Aaron Thorn	Abuse: PO Aaron Thorn searched the car in which § 87(2)(b), § 87(2)(b) and § 87(2)(b) were occupants.	
M.POM Aaron Thorn	Abuse: PO Aaron Thorn refused to provide his name to § 87(2)(b)	

Synopsis

§ 87(2)(b) filed this complaint over the phone with the Civilian Complaint Review Board on May 26, 2006 regarding an incident that occurred on the previous day. On May 25, 2006 at approximately 5:30 p.m., § 87(2)(b) was driving on West 114th Street and 7th Avenue in Manhattan with his friends, § 87(2)(b) and § 87(2)(b). § 87(2)(b) made a U-turn at a red light on 7th Avenue in Manhattan. Officers identified from the investigation as PO Eric Lugo and PO Aaron Thorn of the 32nd Precinct pulled over § 87(2)(b)'s vehicle. During the car stop, § 87(2)(b) exited the vehicle and walked towards a nearby building. PO Thorn approached § 87(2)(b) allegedly said, "Come here you little nigger" and instructed him to return to the vehicle (Allegation A and B). PO Thorn and § 87(2)(b) returned to § 87(2)(b)'s vehicle. PO Lugo instructed § 87(2)(b) and § 87(2)(b) to exit the vehicle. Allegedly, PO Lugo frisked and searched § 87(2)(b) and § 87(2)(b) (Allegations C through F), at which time a gravity knife was recovered from § 87(2)(b). As the three civilians tried to explain why § 87(2)(b) had a knife, PO Lugo and PO Thorn allegedly told the three civilians to, "Shut the fuck up" (Allegation G and H). PO Thorn allegedly frisked and searched § 87(2)(b) (Allegations I and J). PO Lugo and PO Thorn allegedly searched § 87(2)(b)'s vehicle (Allegations K and L) and PO Thorn allegedly refused to provide his name to § 87(2)(b) (Allegations M). § 87(2)(b) was arrested § 87(2)(b).

§ 87(2)(b), § 87(2)(g)

This case was initially assigned to Investigator Chris Duerr on May 31, 2006. On August 7, 2006, the case was reassigned to the undersigned investigator.

Summary of Complaint

§ 87(2)(b)

§ 87(2)(b) is a § 87(2)(b)-year-old Black male who is 6 feet 1 inch tall with brown eyes. § 87(2)(b) provided an initial phone statement on June 1, 2006 (encl. 3c) and was interviewed at the CCRB on June 2, 2006 (encl. 4-4e). Both of his statements are similar and have been combined into the following narrative.

On May 25, 2006, at approximately 5:50 p.m., § 87(2)(b) was driving his vehicle southbound on West 144th Street in Manhattan. § 87(2)(b)'s friend, § 87(2)(b) was seated in the front passenger seat and his friend, § 87(2)(b) was seated directly behind § 87(2)(b). § 87(2)(b) crossed over the threshold of the street line in which he was supposed to stop his vehicle and made a U-turn at a red light. § 87(2)(b) parked his vehicle on West 144th, directly in front of a Citibank. § 87(2)(b) exited the vehicle and approached the bank. A black Chevy Impala, which had its flashing lights on, pulled up behind § 87(2)(b)'s vehicle. The officers, identified from the investigation as PO Eric Lugo and PO Aaron Thorn, exited the Impala. PO Thorn approached § 87(2)(b) who had just stepped into the bank. PO Lugo approached § 87(2)(b)'s driver side window. § 87(2)(b) explained to PO Lugo that he was already in front of the divider when he made the turn. PO Lugo asked to see § 87(2)(b)'s license and registration and he complied. § 87(2)(b) re-entered § 87(2)(b)'s vehicle as PO Thorn stood next to § 87(2)(b)'s car. § 87(2)(b) told § 87(2)(b) that he initially refused to come back to the vehicle. After § 87(2)(b) provided the officers with his paperwork, PO Lugo and PO Thorn returned to their vehicle. A short time later, PO Lugo told § 87(2)(b) that he and PO Thorn wanted to search the vehicle. When § 87(2)(b) asked why, PO Lugo responded, "For some reason § 87(2)(b) did not want to get back in the vehicle." PO Lugo and PO Thorn asked the occupants to step out of the vehicle. § 87(2)(b) asked PO Lugo if he had a warrant to search his car and PO Lugo responded, "We don't need a warrant. The fact that § 87(2)(b) did not want to get back

into the vehicle was reason enough.” Prior to searching the vehicle, PO Lugo frisked § 87(2)(b) s waist, chest, leg and crotch area and then proceeded to search his pockets. PO Lugo instructed § 87(2)(b) to stand at the back of his vehicle. During the search of § 87(2)(b) PO Lugo retrieved a knife blade from § 87(2)(b). PO Lugo explained to § 87(2)(b) that he could be arrested for having a razor. § 87(2)(b), § 87(2)(b) and § 87(2)(b) tried to explain to the officers that § 87(2)(b) carries a razor as a result of his job § 87(2)(b). PO Lugo and PO Thorn told the three males to “shut the fuck up.” After the incident, § 87(2)(b) told § 87(2)(b) that PO Thorn searched through his pockets. However, § 87(2)(b) never observed PO Thorn search § 87(2)(b), § 87(2)(b), § 87(2)(b) and § 87(2)(b) were instructed to stand towards the back of § 87(2)(b) s vehicle. PO Lugo and PO Thorn searched the front and back seats of § 87(2)(b) s vehicle. However, § 87(2)(b) could not see exactly which sections of the vehicle were searched because his rear window is tinted and difficult to see through. During the vehicle search, a marked car responded to the scene. A Black male in uniform, who was identified from the investigation as PO Randy Morris, exited the car and spoke with PO Thorn.

§ 87(2)(b) asked PO Lugo and PO Thorn for their names and badge numbers. PO Lugo displayed his shield and verbally stated his last name as “PO Lopez.” PO Thorn removed his shield from underneath his shirt, but did not verbally state anything. § 87(2)(b) obtained a piece of paper and wrote down the officers’ badge numbers and names. After § 87(2)(b) wrote down the officer’s shield numbers, PO Lugo said, “Since you want to take down people’s badge numbers, your friend is going to jail for the blade.” The officers handcuffed § 87(2)(b) and placed him under arrest. PO Lugo and PO Thorn never issued § 87(2)(b) a summons. After the incident, § 87(2)(b) told § 87(2)(b) that the officers slammed him against the car door, choked him, pushed him into the vehicle and told him to “shut the fuck up.”

Results of Investigation

Victims

§ 87(2)(b)

§ 87(2)(b) is a § 87(2)(b)-year-old Black male who is 6 feet 1 inch tall with brown hair and brown eyes. § 87(2)(b) § 87(2)(b) was interviewed at the CCRB on June 2, 2006 (encl. 5-5e) § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g) . On May 25, 2006 at approximately 5:50 p.m., § 87(2)(b) exited § 87(2)(b) s vehicle and walked towards a Citibank. § 87(2)(b) entered one foot inside of the building when an officer, identified from the investigation as PO Thorn, approached § 87(2)(b) pulled his badge out of his shirt, said, “Come here you little nigger” and instructed § 87(2)(b) to get back into the vehicle. § 87(2)(b) verbally refused. PO Thorn requested § 87(2)(b) s identification at least four times. PO Thorn tried to push, by way of a “shoulder nudge,” § 87(2)(b) back towards § 87(2)(b) s vehicle. § 87(2)(b) went back to § 87(2)(b) s car in order to “get the officer off of his back.” When § 87(2)(b) arrived back at § 87(2)(b) s vehicle, he re-entered the vehicle and provided PO Thorn with his identification because PO Thorn explained to § 87(2)(b) that he could provide his identification at the scene or he would be arrested and have to provide it downtown. The second officer, described from the investigation as PO Lugo, was speaking with two other officers who were dressed in uniform that arrived on the scene. The uniformed officers, who were identified from the investigation as PO Randy Morris and Auxiliary Police Officer Ramirez, were seated in a marked police vehicle.

As PO Thorn spoke to § 87(2)(b) he casually cursed, though he never cursed directly at § 87(2)(b) PO Thorn and PO Lugo instructed § 87(2)(b) and § 87(2)(b) to exit the vehicle. PO Thorn frisked and searched § 87(2)(b) PO Thorn put his hands inside of § 87(2)(b) s pockets and touched his pants and socks. PO Thorn and PO Lugo took turns searching § 87(2)(b) and § 87(2)(b) PO Thorn used a lot of profanity and cursed at § 87(2)(b) However, § 87(2)(b) did not specify exactly what PO Thorn said. PO Thorn and PO Lugo searched § 87(2)(b) s vehicle. § 87(2)(b) observed the officers from § 87(2)(b) s rear windshield. § 87(2)(b) indicated that § 87(2)(b) s back windshield is not tinted and that he

could see the officers clearly. PO Thorn and PO Lugo opened the glove box, moved the seats, and looked in the front and back seats. PO Thorn searched the vehicle on the passenger side, however, § 87(2)(b) could not see which side PO Lugo searched. § 87(2)(b) observed PO Thorn examining the glove box, through the CD cases and in between the seats. During the search of § 87(2)(b) PO Lugo retrieved a razor and stated, "He can get arrested, but I'll let you guys go." § 87(2)(b) asked PO Thorn and PO Lugo for their shield numbers. PO Thorn pointed to his shield and said, "This is my shield number. This is my ID. You don't need to know my name. You don't need to know nothing else." § 87(2)(b) could only see the first three numbers. PO Lugo responded that his last name was "Lopez," but he did not give § 87(2)(b) his badge number. § 87(2)(b) obtained a pen and a piece of paper to write down the officers' information. As soon as he did so, PO Lugo said, "You – he's going down. You just got your friend in trouble." The officers then handcuffed § 87(2)(b) and pushed him into the backseat of the unmarked car. § 87(2)(b) overheard § 87(2)(b) yelling, "Why are you choking me. Why are you pushing me?"

§ 87(2)(b)

§ 87(2)(b) is a Black male who is 5 feet 8 inches tall with brown hair and brown eyes. § 87(2)(b) appeared at the CCRB with § 87(2)(b) and § 87(2)(b) on June 2, 2006, however, he chose not to provide a statement on the advice of his attorney § 87(2)(b). On September 12, 2006, § 87(2)(b) § 87(2)(b) agreed to provide a CCRB statement. § 87(2)(b) failed to appear for two appointments, which were scheduled for September 27, 2006 and October 10, 2006. § 87(2)(b), § 87(2)(g)

Attempts to Locate and Identify Witnesses

PO Morris, the Auxiliary Officer Coordinator for the 32nd Precinct, indicated during his CCRB statement that Auxiliary Police Officer (APO) Ramirez was with him during the incident. On February 27, 2006, the undersigned investigator contacted PO Morris and was informed that APO Ramirez § 87(2)(b) would be on sick leave indefinitely (encl. 15g). However, PO Morris did not specify APO Ramirez's first name. § 87(2)(g) § 87(2)(g)

Attempts to Obtain Physical Evidence

§ 87(2)(b), § 87(2)(g)

During a phone conversation on September 12, 2006, § 87(2)(b) indicated that he sold the Acura Legend, which he was driving during the incident, in June and did not have any photographs of the vehicle to provide as evidence to the undersigned investigator.

Identification of Officers Interviewed

During § 87(2)(b)'s CCRB Statement he provided the shield number of PO Morris and PO Thorn and indicated that an officer by the name of "PO Lopez" was present. PO Lugo's name appears on the complaint report and arrest report. PO Thorn is listed as PO Lugo's partner on the roll call. The SPRINT report indicates that an anti-crime team made an arrest in the vicinity of West 144th Street and 7th Avenue on May 25, 2006 at approximately 5:30 p.m. The 32nd Precinct roll call for May 25, 2006 confirms that PO Lugo and PO Thorn were assigned to the anti crime unit. PO Lugo and PO Thorn confirmed during their CCRB statements that PO Morris arrived at the scene.

Officer Statements

PO Eric Lugo

§ 87(2)(a) 160.50

CCRB Statement

PO Lugo is a § 87(2)(b)-year-old Hispanic male who is 6 feet 1 inch tall, 200 pounds with black hair and hazel eyes. He has 3 years tenure with the NYPD. PO Lugo was interviewed at the CCRB on October 24, 2006 (encl. 7-7e). On May 25, 2006 PO Lugo worked from 9:30 a.m. to 6:05 p.m. and was assigned to a plainclothes anti crime unit with PO Thorn. PO Lugo drove unmarked vehicle # § 87(2)(b). PO Lugo had the following memo book entry: At 5:15 p.m. conducted a car stop at West 144th Street. At 5:20 p.m. § 87(2)(b) was arrested.

On May 25, 2006 at approximately 5:00 p.m., PO Lugo and PO Thorn observed and pulled over a vehicle, which made a U-turn on a red light. The vehicle was subsequently identified as § 87(2)(b)s. PO Lugo could not recall if the vehicle had tinted windows. Before PO Lugo and PO Thorn exited their vehicle they observed a male, who was seated in the front passenger seat of the vehicle, exit and walk southbound on 7th Avenue. The male, subsequently identified as § 87(2)(b) noticed PO Lugo and PO Thorn but continued to walk away. PO Thorn stopped § 87(2)(b) to find out why he walked away from the vehicle. PO Lugo was about ten feet away from PO Thorn and § 87(2)(b) but had not yet approached § 87(2)(b)s vehicle. PO Lugo overheard PO Thorn and § 87(2)(b)s conversation. § 87(2)(b) never entered any buildings prior to PO Thorn stopping him. § 87(2)(b) became irate and said in a loud voice, “You are not pulling me over. You are pulling the vehicle over. I have nothing to do with that vehicle. You did not stop me.” PO Lugo became suspicious of § 87(2)(b) and believed there was something in the vehicle that he did not want to be a part of. § 87(2)(b) refused to return to the vehicle, which raised PO Lugo’s level of suspicion. § 87(2)(b) finally complied and was instructed to stand at the rear of the vehicle. § 87(2)(b) walked back to § 87(2)(b)s vehicle on his own accord. PO Lugo approached the driver side window of § 87(2)(b)s vehicle as PO Thorn remained with § 87(2)(b).

§ 87(2)(b) provided PO Lugo with his license and registration. When PO Lugo explained that he had pulled over § 87(2)(b)s vehicle as a result of him making a U-turn at a red light, § 87(2)(b) responded, “Officer, can you give me a break? I just wanted to grab this parking spot.” § 87(2)(b) appeared to be nervous and could not recall where his insurance papers were located. PO Lugo observed a passenger, subsequently identified as § 87(2)(b) sitting directly behind § 87(2)(b) PO Lugo observed a pocketknife clipped to § 87(2)(b)s left pocket. The knife was inside of the left pocket but the clip was visible. The knife was approximately five inches in length and had the ability to be “flicked open.” PO Lugo instructed § 87(2)(b) to exit the vehicle to ensure that he could not grab or reach for a weapon and asked him if he had any sharp objects or weapons. § 87(2)(b) responded, “No.” PO Lugo frisked the driver over his outer garments near his waistband and pockets to make sure he was not in possession of any weapons. PO Lugo never searched through § 87(2)(b)s pockets. PO Lugo instructed § 87(2)(b) to exit the vehicle and asked him if he had any sharp objects or weapons. § 87(2)(b) responded, “Yes, I have a pocket knife.” § 87(2)(b) explained that he works as a § 87(2)(b) PO Lugo frisked § 87(2)(b) the same way he frisked § 87(2)(b). § 87(2)(b) attempted to grab the knife, however PO Lugo grabbed it first and removed it from the clip. PO Lugo was not sure why § 87(2)(b) had reached for the knife. PO Lugo observed PO Thorn frisk § 87(2)(b) PO Lugo and PO Thorn conducted a visual inspection of the vehicle to ensure that there were no additional weapons. While the doors of the vehicle were open, PO Lugo and PO Thorn looked into the front and rear section of the vehicle. PO Lugo and PO Thorn never entered the vehicle or opened any compartments, particularly the trunk. All three individuals provided their identification to PO Lugo and PO Thorn. § 87(2)(b) was placed under arrest § 87(2)(b). PO Lugo made the decision to arrest § 87(2)(b) before any of the civilians asked him and PO Thorn to provide their names and shield numbers. PO Lugo’s shield was clipped to the side of his pocket and was clearly visible. PO Lugo and PO Thorn verbally provided their names and shield numbers to the males. PO Lugo and PO Thorn never used any physical force against any of the males. PO Lugo never used profanity to control any of the civilians and specifically never said, “Shut the fuck up.” PO Lugo never heard PO Thorn say to § 87(2)(b) “Come here you little nigger.” PO Morris arrived at the scene with an Auxiliary Police Officer after the civilians were frisked. PO Lugo and PO Thorn used their discretion in not issuing a summons to § 87(2)(b) for the vehicle infraction.

PO Aaron Thorn

PO Thorn is a § 87(1)-year-old Black male who is 6 feet 2 inches tall, 225 pounds with black hair and brown eyes. He has 13-years tenure with the NYPD. PO Thorn was interviewed at the CCRB on November 6, 2006 (encl. 8-8c). On May 25, 2006, PO Thorn worked from 9:30 a.m. until 6:05 p.m. and was assigned to the anti-crime unit with PO Lugo. PO Thorn did not have a copy of his memo book with him during the interview. § 87(2)(g)

On May 25, 2006 at approximately 5:15 p.m. after stopping a vehicle that made a U-turn on a red light, PO Thorn approached a male, subsequently identified as § 87(2)(b) who exited the vehicle. PO Thorn instructed § 87(2)(b) to return to the vehicle. PO Thorn never said, "Come here you little nigger." Initially, § 87(2)(b) refused to return to the vehicle. PO Thorn explained that since § 87(2)(b) was inside of the vehicle during the stop, he had to return to the vehicle. § 87(2)(b) agreed to return to the vehicle. PO Thorn never physically grabbed or "nudged" § 87(2)(b). When PO Thorn and § 87(2)(b) arrived back at the vehicle, PO Thorn instructed § 87(2)(b) to stand next to the vehicle. PO Thorn explained to § 87(2)(b) that he would have to frisk him for his safety. PO Thorn frisked the outside of § 87(2)(b)'s clothing, including his chest, waist and leg areas. PO Thorn peered into the vehicle to observe the driver, who was subsequently identified as § 87(2)(b) and the back passenger, who was subsequently identified as § 87(2)(b). PO Thorn could not recall if § 87(2)(b) and § 87(2)(b) were making any suspicious movements or acting in a nervous manner.

PO Lugo asked § 87(2)(b) and § 87(2)(b) to exit the vehicle one at a time. PO Lugo frisked § 87(2)(b) and § 87(2)(b) the same way PO Thorn frisked § 87(2)(b). PO Thorn did not hear any of the passengers indicate that they had a sharp object on their person. PO Lugo recovered a gravity knife from § 87(2)(b) during the frisk. PO Thorn is not sure when or how PO Lugo first noticed the gravity knife or exactly when it was recovered. PO Lugo verbally told PO Thorn that § 87(2)(b) was in possession of a knife. PO Lugo and PO Thorn made the decision to arrest § 87(2)(b) and § 87(2)(b). PO Thorn and PO Lugo became suspicious of the vehicle given the fact that § 87(2)(b) was hesitant about returning to the vehicle. When asked if there were any other factors that rose his level of suspicion, PO Thorn indicated that the recovery of the knife was also a factor. PO Thorn was concerned for his safety because there "were three of them and only two of us." PO Thorn recalled looking into the vehicle, but could not recall whether he entered or searched the vehicle or the trunk. PO Thorn never used any profanity during the incident and specifically never told any of the individuals to "shut the fuck up." PO Thorn did not remember whether any of the passengers asked him for his name or shield information. However, his shield was hanging around his neck and clearly visible. At some point, PO Morris arrived at the scene and exited his vehicle but never interacted with the three passengers. PO Thorn could not recall if it was before or after the individuals were frisked. PO Thorn never used physical force against § 87(2)(b).

PO Randy Morris

PO Morris is a § 87(1)-year-old bald Black male who is 5 feet 8 inches tall, 185 pounds with brown eyes. He has 16-years tenure with the NYPD. PO Morris was interviewed at the CCRB on October 27, 2006 (encl. 9-9d). On May 25, 2006, PO Morris worked from 2:37 p.m. until 11:00 p.m. and was assigned as the Auxiliary Police Officer Coordinator. PO Morris was assigned to marked vehicle # AP32 with Auxiliary Police Officer Ramirez. PO Morris did not have a copy of his memo book with him during the interview.

On May 25, 2006 at approximately 5:00 p.m., PO Morris, while conducting routine patrol, observed PO Thorn and PO Lugo conducting a vehicle stop on 7th Avenue. PO Morris pulled over to see if they needed assistance. PO Morris noticed three black males standing towards the rear of their vehicle. PO Lugo and PO Thorn told PO Morris they did not need assistance. PO Morris did not know the circumstances of the vehicle stop and did not have any verbal interaction with any of the three civilians. PO Morris was present when the three individuals were frisked and indicated that a gravity knife was recovered from one of the individuals. PO Morris was at the scene for approximately five minutes. PO Morris never heard any of the civilians ask PO Thorn or PO Lugo for their name or shield numbers, although, one of the civilians wrote down PO Lugo's name on a piece of paper. PO Morris could not recall whether a vehicle search was

conducted while he was at the scene. APO Ramirez never had any verbal interaction with any of the individuals. PO Morris never observed any physical force being used against any of the civilians. PO Morris never heard PO Lugo or PO Thorn use any profanity towards any of the individuals. PO Morris could not recall at what point he left the scene, specifically whether it was before or after the individual with the knife was placed into a patrol car.

Police Department Documents

SPRINT (encl. 10)

The SPRINT report indicates that on May 25, 2006 at 5:19 p.m. an arrest was made at West 144th Street and 7th Avenue by the 32nd Precinct anti crime team.

Stop, Question and Frisk Log (encl. 13)

Although there is no listing for § 87(2)(b) and § 87(2)(b) on the stop, question and frisk log, within the confines of the 32nd Precinct, for May 24, 2006, PO Lugo made a notation in his memo book regarding the incident.

Command Log, Property Vouchers, Roll Call (encl. 11-11f)

The command log notes that § 87(2)(b) arrived at the 32nd Precinct at § 87(2)(b) Property voucher # § 87(2)(b) indicates that a silver gravity knife and black knife holder were retrieved from § 87(2)(b) The 32nd Precinct tour 3 roll call for May 25, 2006 confirms that PO Lugo and PO Thorn were assigned to the anti crime team and PO Morris was the Auxiliary Police Officer Coordinator.

MISD- Warrant Check and New York State Driver's License/License Plate Check (encl. 12-12k)

The paperwork obtained from MISD and the New York State Police Department confirms that PO Lugo and PO Thorn conducted a name check, warrant check and license plate check for § 87(2)(b), § 87(2)(b) and § 87(2)(b) on May 25, 2006.

Police Officer CCRB History

PO Lugo and PO Thorn do not have any previously substantiated allegations (encl. 2-2a).

Complainant CCRB History

§ 87(2)(b) was a victim in CCRB case § 87(2)(b), § 87(2)(g) . § 87(2)(b) and § 87(2)(b) have not filed any previous CCRB allegations (encl. 2b-2d).

Civilian Criminal Conviction History

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]

Conclusions and Recommendations

Identification of Subject Officers

During his CCRB interview, § 87(2)(b) described PO # 1 as a white or Hispanic male and PO # 2 as a heavy set Black male. It was confirmed that PO Lugo is a Hispanic male and PO Thorn is a Black male and that they were the only officers who interacted with § 87(2)(b), § 87(2)(b) and § 87(2)(b) § 87(2)(g)
[REDACTED]

§ 87(2)(g) . Moreover, when § 87(2)(b) filed the complaint he described one of the subject officers as PO Morris, shield # 32140, and indicated that he had two gold teeth containing the inscription of a bunny and the letter “B.” However, upon interviewing PO Thorn, it was confirmed that he has gold teeth and that PO Morris was not directly involved in the incident.

Undisputed Facts

It is undisputed that § 87(2)(b) committed a vehicle infraction and as a result was stopped by PO Lugo and PO Thorn. It is undisputed that after the vehicle was stopped, § 87(2)(b) exited the vehicle, walked away and refused to provide his identification or return to the vehicle. It is undisputed that PO Thorn stopped § 87(2)(b) and instructed him to return to the vehicle. It is undisputed that § 87(2)(b), § 87(2)(b) and § 87(2)(b) were frisked. It is undisputed that a gravity knife was recovered from § 87(2)(b) during the frisk. It is undisputed that PO Lugo and PO Thorn looked into the vehicle. It is undisputed that PO Lugo noted the vehicle stop and arrest in his memo book.

Disputed Facts

§ 87(2)(b), § 87(2)(g)

Credibility Analysis

§ 87(2)(b), § 87(2)(g) . § 87(2)(b) filed this complaint less than twenty-four hours after it occurred. § 87(2)(b) was not arrested or issued a summons § 87(2)(g) . § 87(2)(b) admitted to making a U-turn at red light § 87(2)(b), § 87(2)(g) . § 87(2)(b) admitted that he initially refused to return to the vehicle or provide his identification upon PO Thorn’s request. § 87(2)(g) . § 87(2)(b) indicated that he observed everything clearly through § 87(2)(b)’s back windshield, however § 87(2)(b) testified that since his window is tinted it was difficult to see exactly where the officers searched. § 87(2)(g)

§ 87(2)(b) [§ 87(2)(b)] [§§ 86(1)(3)&(4)]

§ 87(2)(g)

PO Lugo indicated that a visual inspection of the vehicle was conducted to ensure that there were no additional weapons but indicated that he never entered the vehicle. PO Thorn, on the other hand, indicated that he looked into the vehicle but could not recall whether a vehicle search was conducted. § 87(2)(g) . PO Morris indicated he was present when the three passengers were frisked, however he could not provide details in regards to the frisk and could not recall if a vehicle search was conducted at the scene.

Allegations Not Pleaded

§ 87(2)(b) admitted to making an illegal U-turn at a red light on 7th Avenue in Manhattan and PO Lugo and PO Thorn offered the same reason as to why they stopped § 87(2)(b)’s vehicle. § 87(2)(g) . § 87(2)(b) indicated that after PO Thorn requested his identification four

times, PO Thorn said, “You can provide it here, or I am going to put these cuffs on you, arrest you and you can provide it downtown.” § 87(2)(b), § 87(2)(g)

§ 87(2)(b) and § 87(2)(b) alleged that PO Lugo and PO Thorn made the decision to arrest § 87(2)(b) only after their names and shield numbers were requested. § 87(2)(b), § 87(2)(g)

After the incident § 87(2)(b) alleged that § 87(2)(b) told him that the officers “choked him,” “slammed him into a car” and told him to “shut the fuck up.” However, § 87(2)(b) did not witness this during the incident. § 87(2)(b) alleged that he heard § 87(2)(b) yelling, “Why are you choking me? Why are you pushing me?” at the scene, however § 87(2)(b) did not witness this. § 87(2)(b)

Allegation A: Offensive Language: PO Aaron Thorn made remarks to § 87(2)(b) based upon race.

Allegation G: Discourtesy: PO Eric Lugo spoke obscenely to § 87(2)(b) and § 87(2)(b)

Allegation H: Discourtesy: PO Aaron Thorn spoke obscenely to § 87(2)(b) and § 87(2)(b)

Allegation M: Abuse of Authority: PO Aaron Thorn refused to provide his name to § 87(2)(b).

§ 87(2)(b) alleged that PO Thorn said, “Come here you little nigger” as he approached him. PO Thorn denied this. Since § 87(2)(b) was still seated in his vehicle when this occurred, he did not overhear it. PO Lugo indicated that he was standing close enough to PO Thorn and § 87(2)(b) during their conversation but he never heard such a comment § 87(2)(g)

§ 87(2)(b) alleged that the officers told him, § 87(2)(b) and § 87(2)(b) to “shut the fuck up” when they explained the reason why § 87(2)(b) had a knife. § 87(2)(b) indicated that PO Thorn used profanity against him but did not specify what was said. PO Lugo and PO Thorn deny using any profanity towards any of the individuals. § 87(2)(b) alleged that upon asking PO Thorn for his name and shield number he responded, “This is my shield number but you don’t need to know my name.” § 87(2)(b)

§ 87(2)(g) alleged PO Thorn removed his shield but did not verbally state his name or shield number. § 87(2)(b) indicated that § 87(2)(b) wrote down the officers’ name and shield numbers on a piece of paper. When § 87(2)(b) filed the complaint he provided PO Lugo’s shield number but did not provide PO Thorn’s name or shield number. § 87(2)(g)

Allegation B: Abuse of Authority: PO Aaron Thorn stopped § 87(2)(b)

Kamins Search and Seizure indicates that if a vehicle is stopped for a driving infraction and a passenger exits the car and walks away, the police are permitted to ask him for basic information under a request for information stop. Essentially, the passenger has not engaged in any conduct constituting criminal activity, especially since the traffic infraction is attributable to the driver. However, if additional circumstances exist that create a reasonable suspicion, police pursuit will be justified *Kamins, 5-84 (encl. 1c)*. § 87(2)(b), § 87(2)(g)

PO Thorn approached § 87(2)(b) instructed him to return to the vehicle and said, “Since the vehicle was stopped, you have to return to it since you were inside of the vehicle during the stop.” § 87(2)(b), § 87(2)(g)

Initially, § 87(2)(b) refused to return to the vehicle or to provide identification. § 87(2)(b) explained to PO Thorn that he was on his way to the bank. In fact, § 87(2)(b) alleged that he had stepped one foot into the bank when PO Thorn stopped him. PO Thorn, on the other hand, indicated that § 87(2)(b) never entered any buildings. Although *Kamins* specifically notes that an officer only has the right to question a passenger who exits a

vehicle that is stopped for an infraction, it also indicates that, during a street encounter, if a suspect flees before the police ask him questions, this conduct has been viewed as an escalating factor because the suspect has, in effect, demonstrated a consciousness of guilt *Kamins, 2-74 (encl. 1-1a)*. § 87(2)(g)

Allegation C: Abuse of Authority: PO Eric Lugo frisked § 87(2)(b)

Allegation I: Abuse of Authority: PO Aaron Thorn frisked § 87(2)(b)

Allegation D: Abuse of Authority: PO Eric Lugo searched § 87(2)(b)

Allegation J: Abuse of Authority: PO Aaron Thorn searched § 87(2)(b)

§ 87(2)(g)

According to PO Lugo, as a result of observing the gravity knife, he instructed § 87(2)(b) and § 87(2)(b) to exit the vehicle at which point he frisked the individuals. However, § 87(2)(b) and § 87(2)(b) testified that PO Lugo instructed the individuals to exit the vehicle so that they could conduct a search of the vehicle “for the same reason that § 87(2)(b) did not want to return to the vehicle.” § 87(2)(b) and § 87(2)(b) indicated that the knife was not recovered until after PO Lugo frisked and searched § 87(2)(b). Furthermore, PO Thorn testified that he was not sure when or how PO Lugo first noticed the gravity knife or exactly when it was recovered.

§ 87(2)(g)

PO Morris was aware of a knife being recovered from one of the passengers and was present for the frisk but did not provide information as to which came first. § 87(2)(b) and § 87(2)(b) indicated that PO Lugo and PO Thorn searched all three of them in addition to the frisk. However, PO Lugo and PO Thorn deny ever searching the individuals. *Kamins Search and Seizure* specifies that a frisk of the driver and passenger of a vehicle is justified if the police observe and recover a weapon from one of the occupants of the vehicle. However, it also indicates that if the police stop a car for a traffic infraction, that fact, in and of itself, will not justify a frisk of a passenger even when the officer alleges that the passenger acted in a furtive manner *Kamins, 5-86 (encl. 1d)*. § 87(2)(b), § 87(2)(g)

Allegation E: PO Eric Lugo frisked § 87(2)(b)

PO Lugo testified that prior to frisking § 87(2)(b) he asked him if he had any sharp object or weapons on him. § 87(2)(b) answered “yes” and at that point the knife was recovered. § 87(2)(g)

PO Lugo testified that as he stood next to the driver side window of § 87(2)(b)'s vehicle he observed a pocketknife clipped to § 87(2)(b)'s left pocket. The knife was inside of the left pocket but the clip was visible. § 87(2)(g)

Allegation F: PO Eric Lugo searched § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

In accordance to Patrol Guide Procedure 208-05, *if an unusual object is detected, the officer will reach into or under the clothing to remove it (encl. 1f)*. Furthermore, *Kamins Search and Seizure* guidelines confirms that an officer can conduct a full blown search of a person once they have probable cause to believe an individual is in possession of a weapon, *Kamins*, 2-84 (encl. 1g). § 87(2)(g)

Allegation K: Abuse of Authority: PO Eric Lugo searched the car in which § 87(2)(b), § 87(2)(b) and § 87(2)(b) were occupants.

Allegation L: Abuse of Authority: PO Aaron Thorn searched the car in which § 87(2)(b), § 87(2)(b) and § 87(2)(b) were occupants.

§ 87(2)(b) and § 87(2)(b) corroborate that a search of the vehicle was done only after the knife was recovered from § 87(2)(b). However, § 87(2)(b) indicated that since his back windshield is tinted he could not determine exactly which part of the vehicle PO Lugo and PO Thorn searched. § 87(2)(b) on the other hand, denied the fact that § 87(2)(b)'s back windshield was tinted and testified that he had a clear view into the vehicle and observed PO Lugo and PO Thorn search through the glove compartment, in between the seats and inside of the CD cases. PO Lugo testified that he looked into the front and rear sections of the vehicle but never entered or opened any compartments inside of the vehicle. PO Thorn also testified that he looked into the vehicle but could not recall whether he entered or searched the inside of the vehicle. *Kamins* notes that once the occupants are outside of the car, a search is conducted when an officer sticks his head inside the car to conduct a visual inspection *Kamins 5-70 (encl. 1b)*. The property voucher confirms that a knife was recovered from § 87(2)(b) at the scene. § 87(2)(b), § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: